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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,955	10/21/2003	George Mileos	0007049	3460
826	7590	08/17/2006	EXAMINER KING, ANITA M	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			ART UNIT 3632	PAPER NUMBER

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,955

Applicant(s)

MILEOS ET AL.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-7,9-30,32-47,57-64,85,91,94,101 and 102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 47,57-64 and 91 is/are allowed.
- 6) ☒ Claim(s) 25,30,85,94,101 and 102 is/are rejected.
- 7) ☒ Claim(s) 2-7,9-24,26-29 and 32-46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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This is a non-final office action for application number 10/689,955, Keyboard Support Mechanism, filed on October 21, 2003. Claims 2-7, 9-30, 32-47, 57-64, 85, 91, 94, 101, and 102 are currently pending in this application.

Allowable Subject Matter

Applicant is advised that the Notice of Allowance mailed October 31, 2005 is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

Claims 47, 57-64, and 91 are allowed.

Claims 2-7, 9-24, 26-29, and 32-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 85 and 94 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim Objections

Claims 25, 47, 101, and 102 are objected to because of the following informalities: in claim 25, line 5, --end-- should be inserted after "front" and in lines 14 and 15, --end-- should be inserted after "rear"; in claim 47, line 12, --end-- should be inserted after "rear"; in claim 101, line 17, --end-- should be inserted after "front"; and in claim 102, line 15, --end-- should be inserted after "rear". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 85 and 94 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 85 recites the limitations "the second linkage arm" bridging lines 1 and 2; "the first linkage arm" in line 2; "said second bracket member" bridging lines 3 and 4; "said first inclined surface" in line 4; and "the arms" and "the axis" in line 5. There is insufficient antecedent basis for these limitations in the claim.

Claim 94 recites the limitation "said linkage" bridging lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or

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discovers any new and useful process ... may obtain a patent therefor..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 101, 102, and 30 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 7, 10, and 8 of prior U.S. Patent No. 5,924,664. This is a double patenting rejection.

The claims are identical with the exception of the following wording variations which do not change the scope of the claim or reflect a change where one claim would be infringed without infringing the other claim.

In regards to claim 101 of the present application, claim 7 of '664 is identical with the exception of the first, second, third, fourth, and fifth "pivot points" as compared to the first, second, third, fourth, and fifth "points" of claim 101. However, this amounts to a difference in labeling only, as the points are defined in each claim as the point at which the element is "pivotally connected." In other words, there is not difference in meaning or scope between "(b) an upper arm having a rear end and a front end, the upper arm being pivotally connected to the mounting bracket at a first point" cited in lines 6-8 of claim 101 and "(b) an upper arm having a rear end and a front end, the upper arm being pivotally connected to the mounting bracket at a first pivot point" in claim 7 of '664. The same arm is pivotally connected to the same mounting bracket at the same point - the pivot point. Thus, there is no difference in scope between the

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claimed invention and the patented claimed invention, and the claim cannot be literally infringed without infringing the claim of the patent.

In regards to claim 102 of the present application a similar analysis can be made where claim 10 of '664 is identical with the exception of the first, second, third, fourth, and fifth "pivot" points as compared to the first, second, third, fourth, and fifth points of claim 102. As explained above, this amounts to a difference of labeling only, as the points are defined in the claim as "pivotally connected." Thus, there is no difference in scope and the claim cannot be literally infringed without infringing the claim of the patent. The difference in the sequence of "not substantially parallel" and "substantially not parallel" are considered to be an inconsequential difference. Also, there is a wording difference between "the lower arm further having within it a second opening such that the lower arm can pivot about the fourth pivot point and can be reciprocatingly moved relative to the fourth pivot point" of claim 10 and "the lower arm further having within it a second opening such that the lower arm can move about the fourth point both pivotally and reciprocatingly" of claim 102. However, the description of movement (pivoting and reciprocating) relative to the same fourth point is the same. Again, there is no difference in scope or difference when considering infringement of the claims.

In regards to claim 30 (which incorporates claim 25) of the present application, claim 30 is identical to claim 8 of '664 with the exception of the first, second, third, and fourth "pivot point" of claim 8. As described above, the first, second, third, and fourth point(s) of the instant application are identified as "pivotally connected" such that the difference between the two amount to a difference in labeling rather than any functional

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or structural difference. Also, there is a wording difference between "wherein the first and fourth pivot points are closer together than the second and third pivot points" of claim 8 ('664) and "wherein the distance between the first and fourth points is less than the distance between the second and third points". However, these are describing the same relativity of the same points, and as such, do not reflect a difference in scope.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 25 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 5,924,664. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 25 contains all the limitations of claim 8 to the exception of the first and fourth "pivot" points being closer together than the second and third "pivot" points. However, based on the arrangement of the upper arm and the mounting bracket, the

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side arm and the mounting bracket, shelf bracket and the upper arm, and the side arm and the shelf bracket, cited in claim 25, it is obvious that the first and fourth points will be closer together than the second and third points.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Anita M. King
Primary Examiner
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August 9, 2006